

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

ITEM #1 Simplified Criminal Records Exemptions

The California Department of Social Services (CDSS) hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held on September 4, 2019, at the following address:

Office Building # 8
744 P St. Room 103
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only if attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you need a language interpreter at the hearing (including sign language), please notify CDSS at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on September 4, 2019.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. Except for nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at [CDSS Public Hearings for Proposed Regulations \(http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-In-Process-and-Completed-Regulations/Public-Hearing-Information\)](http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-In-Process-and-Completed-Regulations/Public-Hearing-Information). Additionally, all the information which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading at the address listed below. Following the public hearing, copies of the Final Statement of Reasons will also be available at the following address:

CONTACT: California Department of Social Services
Office of Regulations Development
744 P. Street, MS 8-4-192
Sacramento, CA 95814
Tel: (916) 657-2856, Fax: (916) 654-3286
Email: ord@dss.ca.gov

CHAPTERS

Title 22, Division 6, Chapters 1, 2, 3, 7.3, 8, 8.5, 8.8, and 9.5; Division 12, Chapters 1 and 3; and Division 15, Chapter 1

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current regulations for the Home Care Aide Registry and Community Care Licensing (CCL) facilities, including Social Rehabilitation Facilities, Adult Day Programs, Crisis Nurseries, Foster Family Homes, Residential Care Facilities for the Elderly, Residential Care Facilities for the Chronically Ill, Child Care Centers, and Family Child Care Homes stipulate that individuals with criminal histories who seek licensure or employment in CCL facilities or inclusion in the Home Care Aide Registry may be eligible for a simplified criminal exemption if they meet specified eligibility criteria. Individuals who are eligible for a simplified criminal record exemption are not required to submit additional information related to their convictions and rehabilitation, and CDSS renders criminal record exemption decisions for these individuals quickly. Currently, individuals may be eligible for a simplified criminal record exemption if they meet the following criteria: the individual does not have a demonstrated pattern of criminal activity, the individual has no more than one conviction, the conviction was for a nonviolent misdemeanor and does not pose a risk of harm to an individual, and it has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation. If an individual with a criminal history does not meet those conditions, then the individual may seek a standard criminal record exemption. To process the individual's request for a standard criminal record exemption, CDSS may request that the individual submit additional information related to their convictions and their rehabilitation. Currently, individuals seeking a standard exemption have 45 days to submit the requested additional information.

The proposed regulations amend the eligibility criteria for a simplified criminal record exemption, and they change the amount of time allotted to individuals seeking a standard criminal record exemption to send to CDSS requested information related to their convictions and rehabilitation. Specifically, the proposed regulations amend the eligibility criteria for a simplified criminal record exemption to allow individuals who have multiple non-violent misdemeanor convictions arising from a single incident of criminal conduct, who do not have a demonstrated pattern of criminal activity, and for whom it has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation to receive a simplified criminal record exemption. Additionally, the proposed regulations specify that individuals who seek a standard criminal record exemption are allotted 30 days to send to CDSS the requested information related to the individual's convictions and rehabilitation.

During the process of developing these regulations, CDSS has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

Anticipated Benefits of the Proposed Regulation

The benefits of the regulatory action to the health and welfare of California residents, worker safety, and the state's environment are as follows: The Department will render decisions

regarding applicants' eligibility for criminal record exemptions more quickly, which will allow applicants to begin working sooner.

Expanded economic opportunity to individuals whose criminal histories suggest they do not pose an excessive threat to individuals in CCL facilities.

CCL facility licensees will be able to fill vacant positions more quickly, when the licensee intends to hire an individual with a limited criminal history.

The proposed regulations have no detrimental impact to California's environment.

The proposed regulations may have a small, but positive impact on the recidivism rate within California, because the ability for an individual with a criminal history to find employment is very strongly correlated with a decreased chance of recidivism. Although the proposed regulations generally do not affect the outcome of the criminal record exemption decision, the proposed regulations expedite the Department's decision-making process, which in turn will allow the affected individuals to begin working more quickly in CCL facilities.

COST ESTIMATE

1. Costs or Savings to State Agencies: None
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance with Government Code Sections 17500 - 17630: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: None

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate upon local agencies or school districts that require reimbursement pursuant to Section 17500 et seq. of the Government Code (GC).

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made because the proposed regulations will expedite the criminal record exemption process for a subset of individuals applying for employment or licensure with CCL facilities or for inclusion in the Home Care Aide Registry.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no adverse impact on small businesses as a result of filing these regulations because the proposed regulations will expedite the criminal record exemption process for a subset of individuals applying for employment or licensure with CCL facilities or for inclusion in the Home Care Aide Registry. This will allow affected small businesses to hire a subset of individuals with limited criminal histories more quickly.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The benefits of the regulatory action to the health and welfare of California residents, worker safety, and the state's environment are as follows:

- CDSS will render decisions on the criminal record exemption eligibility of a subset of individuals seeking licensure or employment in CCL facilities or inclusion in the Home Care Aide Registry more quickly
- CCL facilities seeking to hire individuals with limited criminal histories will be able to do so in a timelier manner.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, CDSS considered the following alternatives with the following results:

Alternative #1: Apply new standards without a regulatory change.

Result: This alternative may result in an unenforceable "underground regulation" by adopting rule a general application without complying with the rulemaking processes required by the Administrative Procedures Act.

Alternative #2: Status quo.

Result: This alternative would result in CDSS continuing to require applicants whose criminal histories suggest they pose a minimal threat to the health and safety of individuals in CCL facilities to undergo the standard criminal record exemption process, which delays CDSS' ability to render criminal record exemption decisions in a timely manner, and which would be an inefficient use of CDSS' resources. Additionally, this alternative would result in continued unnecessary delays in the criminal record exemption process due to an excessively long period during which applicants can submit information relevant to their criminal records and rehabilitation.

Alternative #3: Broader criteria for a simplified criminal record exemption, including criteria that would allow for individuals with convictions arising from multiple incidents of criminal conduct.

Result: This alternative would result in CDSS granting criminal record exemptions to individuals who may pose an excessive risk to the health and safety of individuals in CCL facilities. CDSS, therefore, decided that it was appropriate to continue to require individuals whose criminal histories do not match the proposed simplified criminal record exemption criteria to go through the standard criminal record exemption process so that CDSS may evaluate these individuals on a case-by-case basis.

Alternative #4: 15-day response window for applicants to send information related to their criminal records and rehabilitation.

Result: This alternative would result in the Department placing an unduly burdensome requirement upon individuals seeking a criminal record exemption. A 15-day response window is not enough for applicants to submit the necessary information.

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AUTHORITY AND REFERENCE CITATIONS

Sections 1530, 1530.1, 1568.072, 1569.30, 1596.81, and 1796.63 of the Health & Safety (H&S) Code give CDSS the authority to develop these regulations, and Sections 1516, 1522, 1522.07, 1531, 1568.09, 1568.072, 1568.082, 1568.092, 1569.17, 1596.871, 1796.23, and 1796.24 of the H&S Code are being referenced to make the regulations more specific.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person:	Oliver Chu	(916) 657-2586
Backup:	Sylvester Okeke	(916) 657-2586